

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 ANIMAL PROTECTION AND RESCUE
11 LEAGUE,

12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO,

15 Defendant.
16

Case No.: 16cv1077-MMA (AGS)

**ORDER GRANTING PLAINTIFF'S
UNOPPOSED MOTION TO DISMISS**

[Doc. No. 28]

17
18 Plaintiff Animal Protection and Rescue League ("Plaintiff") commenced this
19 action against Defendant City of San Diego ("Defendant") on May 4, 2016. *See* Doc.
20 No. 1. On February 8, 2019, Plaintiff filed a motion for voluntary dismissal without
21 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).¹ *See* Doc. No. 28. The
22 Court set the motion for hearing on March 18, 2019, meaning Defendant was required to
23 file a response in opposition to Plaintiff's motion on or before March 4, 2019. *See* CivLR
24 7.1.e.2 (stating that "each party opposing a motion . . . must file that opposition or
25 statement of non-opposition . . . not later than fourteen (14) *calendar* days prior to the
26

27 ¹ Federal Rule of Civil Procedure 41(a)(2) provides in pertinent part that "an action may be
28 dismissed at the plaintiff's request only by court order, on terms that the court considers proper." Fed.
R. Civ. P. 41(a)(2).

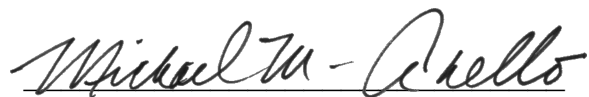
1 noticed hearing.”) (emphasis in original). Defendant is represented by counsel and was
2 properly served with Plaintiff’s motion. To date, Defendant has not filed an opposition or
3 statement of non-opposition to Plaintiff’s motion to dismiss.

4 The Ninth Circuit has held that a district court may grant an unopposed motion to
5 dismiss where a local rule permits, but does not require, it to do so. *See Ghazali v.*
6 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995). Here, Civil Local Rule 7.1.f.3.c provides, “[i]f
7 an opposing party fails to file the papers in the manner required by Civil Local Rule
8 7.1.e.2, that failure may constitute a consent to the granting of a motion or other request
9 for ruling by the court.” As such, the Court has the option of granting Plaintiff’s motion
10 to dismiss based on Defendant’s failure to oppose, and it chooses to do so.

11 Accordingly, the Court **GRANTS** Plaintiff’s unopposed motion to dismiss and
12 **DISMISSES** this action without prejudice. *See Albergo v. Immunosyn Corp.*, No.
13 9cv2653-DMS (MDD), 2012 WL 12953731, at *1 (S.D. Cal. July 25, 2012) (granting the
14 plaintiff’s motion for partial dismissal pursuant to Rule 41(a)(2) as unopposed). The
15 Clerk of Court is instructed to close the case.

16
17 **IT IS SO ORDERED.**

18
19 Dated: March 15, 2019

20 

21 HON. MICHAEL M. ANELLO
22 United States District Judge
23
24
25
26
27
28